

## United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Milton I. Shadur	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	03 C 1334	DATE	4/4/2003
CASE TITLE	Ai Chen Sun, et al vs. Singapore Airlines, Ltd.		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

## MOTION:

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## DOCKET ENTRY:

(1)	<input type="checkbox"/>	Filed motion of [ use listing in "Motion" box above.]
(2)	<input type="checkbox"/>	Brief in support of motion due _____.
(3)	<input type="checkbox"/>	Answer brief to motion due _____. Reply to answer brief due _____.
(4)	<input type="checkbox"/>	Ruling/Hearing on _____ set for _____ at _____.
(5)	<input type="checkbox"/>	Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
(6)	<input type="checkbox"/>	Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
(7)	<input type="checkbox"/>	Trial[set for/re-set for] on _____ at _____.
(8)	<input type="checkbox"/>	[Bench/Jury trial] [Hearing] held/continued to _____ at _____.
(9)	<input type="checkbox"/>	This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to] <input type="checkbox"/> FRCP4(m) <input type="checkbox"/> Local Rule 41.1 <input type="checkbox"/> FRCP41(a)(1) <input type="checkbox"/> FRCP41(a)(2).
(10)	<input checked="" type="checkbox"/>	[Other docket entry] Enter Memorandum. If it were not for the likely imminence of an early Supreme Court ruling that will resolve the issue, this Court would be constrained to remand this action to the Circuit Court of Cook County under Section 1447(c). But under the circumstances, this Court will stay its hand pending the Supreme Court's action. In the meantime neither plaintiffs' counsel nor Singapore Airlines' counsel needs to address either the jurisdictional issue or the question of potential remand.
(11)	<input checked="" type="checkbox"/>	[For further detail see order attached to the original minute order.]

<input type="checkbox"/> No notices required, advised in open court. <input type="checkbox"/> No notices required. <input checked="" type="checkbox"/> Notices mailed by judge's staff. <input type="checkbox"/> Notified counsel by telephone. <input type="checkbox"/> Docketing to mail notices. <input type="checkbox"/> Mail AO 450 form. <input type="checkbox"/> Copy to judge/magistrate judge.		U.S. DISTRICT COURT CLERK 03 APR - 7 PM 3:44 FILED TO	number of notices APR 08 2003 date docketed	Document Number 17
SN courtroom deputy's initials	docketing deputy initials 4/4/2003 date mailed notice SN mailing deputy initials			

Date/time received in  
central Clerk's Office

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

AI CHEN SUN, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 03 C 1334
	)	
SINGAPORE AIRLINES, LTD., et al.,	)	
	)	
Defendants.	)	

**DOCKETED**  
APR 08 2003

MEMORANDUM

This aircrash disaster action, brought by a large number of Taiwanese citizens and other persons of Taiwanese origin against Singapore Airlines, Ltd. ("Singapore Airlines") and Boeing Company ("Boeing"), was originally filed in the Circuit Court of Cook County Illinois. Singapore Airlines then filed a timely Notice of Removal to this District Court under the auspices of 28 U.S.C. §1441(d)<sup>1</sup> on the premise that it is a "foreign state" within the meaning of Section 1603. More precisely, it contends that its majority ownership by a true "foreign state" in the ordinary sense of that term qualifies it as "an agency or instrumentality of a foreign state" under Section 1603(b) -- and hence as a "foreign state" under the Section 1603(a) definition.

At this morning's motion call counsel for Singapore Airlines tendered a motion for dismissal of this action on forum non conveniens grounds. Because Singapore Airlines' counsel advised

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<sup>1</sup> Further citations to Title 28 provisions will simply take the form "Section --."



that he had discussed and reached agreement on the briefing of the matter (including scheduling) with plaintiffs' counsel; who had therefore found no need to appear on the motion call, this Court set a filing date for plaintiffs' response in accordance with the parties' agreement.

But Singapore Airlines' counsel also apprised this Court, during his presentment of the motion to dismiss, that plaintiffs' counsel had announced an intention to file a prompt motion to remand the case to the state court for lack of subject matter jurisdiction. In that respect it appears that an earlier action against Singapore Airlines stemming from the same aircrash disaster (which took place in Taiwan) had been filed in the United States District Court for the Central District of California but had been dismissed there for lack of subject matter jurisdiction because that court held that Singapore Airlines was not a foreign state under Section 6103. That decision, which was based on a rejection of the "tier" approach to the relationship between the corporate defendant and the foreign sovereign, is at odds with Seventh Circuit decisions on the same subject. Indeed, even as this memorandum order is being written the United States Supreme Court has this very matter under consideration in two cases coming from the Ninth Circuit -- Dole Food Co. v. Patrickson, No. 01-593, and Dead Sea Bromine Co. v. Patrickson, No. 01-594, both reported below at 251 F.3d 795 (9<sup>th</sup> Cir. 2001) -- with oral argument having

taken place on January 22, 2003.

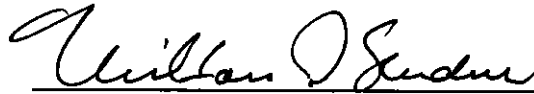
That places this case in a somewhat unusual posture. Even though principles of claim preclusion and issue preclusion do not apply as to substantive issues where an action has been dismissed for lack of federal subject matter jurisdiction, our Court of Appeals has reconfirmed in Perry v. Sheahan, 222 F.3d 309, 318 (7<sup>th</sup> Cir. 2000):

Although only judgments on the merits preclude parties from litigating the same cause of action in a subsequent suit, that does not mean that dismissals for lack of jurisdiction have no preclusive effect at all. A dismissal for lack of jurisdiction precludes relitigation of the issue actually decided, namely the jurisdictional issue.

That means Singapore Airlines cannot now relitigate the jurisdictional issue that was decided by the District Court in California, for the final judgment of that court in that respect is entitled to preclusive effect even if an appeal is pending (see e.g. Amcast Indus. Corp. v. Detrex Corp., 45 F.3d 155, 158-60 (7<sup>th</sup> Cir. 1995)), let alone an appeal that is pending in a different case that poses the same legal issue.

If it were not for the likely imminence of an early Supreme Court ruling that will resolve the issue, this Court would be constrained to remand this action to the Circuit Court of Cook County under Section 1447(c). But under the circumstances, this Court will stay its hand pending the Supreme Court's action. In the meantime neither plaintiffs' counsel nor Singapore Airlines'

counsel needs to address either the jurisdictional issue or the question of potential remand.

A handwritten signature in cursive script, reading "Milton I. Shadur".

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Milton I. Shadur  
Senior United States District Judge

Date: April 4, 2003